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August 19, 1955

CONCORD, N.H.

N. W. Myers, Acting Treasurer.  
University of New Hampshire  
Durham, New Hampshire

Dear Mr. Myers:

In a letter of August 17, 1955, you referred to the minimum wage law recently enacted by the Legislature, and you inquired whether the same is applicable to the University. You point out that the only persons who would be affected, should the law be deemed so applicable, are students who are employed in many varying jobs.

We advise that the University is not subject to the minimum wage law with respect to any of its employees.

In passing it is noted that a statutory minimum wage was first set by the Legislature in 1949. Laws 1949, c. 310, adding ss. 25 et seq. to R.L., c. 213. This law - the wage having been once in the interim revised upward, Laws 1953, c. 232, is the law currently in effect, the recent legislative action, Laws 1955, c. 288, consisting simply of still further raising the minimum. To my knowledge it has never before been suggested that the University is within the operation of the statute with respect to its employees. Acquiescence in a contrary position by those who are directly or indirectly interested, R.L., c. 213, s. 27, for a period of some six years is of a measurable significance.

The conclusion set forth above to the effect that the statute is not applicable to the University rests upon the considerations (1) that the University is an agency or instrumentality of the State of New Hampshire, and (2) that the State, not being specifically designated in the statute as an employer, is not bound by its terms.

The University is organized as a corporation. R.L., c. 222, ss. 1, 3. While, as such, it has a distinct legal existence, it is none the less a State agency or instrumentality. Op. Justices, 88 N.H. 484, 492; Conway v. Board, 89 N.H. 346, 353. And its legal existence is not so independent of the State that its wage policy cannot be controlled by the Legislature, acting for the State in its propriety capacity. See, e.g., State v. Miser, 50 Ariz. 244. Correlatively, because of the

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relationship, such policies will themselves affect the property and funds of the State. The fact that the Legislature has not prescribed standards with respect to the University's wage scales is not so significant as the legislative recognition that only by a specific exemption would the personnel of the University be excepted from the operation of a statute generally applicable to the employees of the State. See, R.L., c. 27-B, s. 18, sub.sec. g, as inserted by Laws 1950, c. 9, (Personnel Act of 1950).

A rule of statutory construction which is applicable to the present circumstances is stated as follows:

"The state is not to be considered within the purview of a statute, however general and comprehensive the language of the statute may be, unless it is expressly named therein. General legislation is intended primarily for the subjects, and not for the sovereign." 49 Am. Jur., States, Etc., s. 14.

It is our opinion, accordingly, that the University is not subject to the provisions of R.L., c. 213, ss. 25 et seq., as amended, governing the payment of minimum wages.

You may further wish to know that we believe the federal Fair Labor Standards Act, 29 USCA, s. 201 et seq., to have no application to the University for the reasons, first, that the University is not engaged in interstate commerce and, secondly, that the governments of the States and of their subdivisions are expressly excepted from the operation of the Act. 29 USCA, s. 203 (d).

Very truly yours,

Warren E. Waters  
Deputy Attorney General

WEW/aml

cc: Labor Department

A. N. Oregon 3/26/56